IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.259--2003

Date of Decision :11.6.2007.

H.P.U.Summer Hill. ..Petitioner.

Versus:

M.C.Shimla. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.S.R.Sharma, Advocate.

For Respondent. Mr.Shrawan Dogra, Advocate.

Sanjay Karol, J (Oral).

The petitioner has filed the present writ petition assailing the order of Principal Secretary (Urban Development) to the Government of H.P., Shimla dated 29th July, 2002 (Annexure:P-6). Learned counsel for the petitioner has argued that the impugned order as also order dated 1st February,2000 passed by the Municipal Corporation needs to be set aside on the ground that the same is unreasoned and there is no justification in holding that all of the properties of the petitioner are to be assessed on the basis of the rateable value as determined under the provision of Section 88 (C) and not Section 88 (b) of the H.P. Municipal Corporation Act, 1994 (hereinafter referred to as `the Act'). According to him the properties of the petitioner would fall under the provision of Section 88(b) and not Section 88(c) of the Act.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

All the properties set up within the municipal limits of the respondent-Corporation are subjected to payment of tax as is determined in accordance with the provisions of Chapter-VIII of the Act. Section 84 of the Act empowers the Municipal Corporation to levy tax, inter alia, on building and land. Section 86 of the Act stipulates the charging of the water tax and general tax up to fifteen percent of the rateable value of the land and buildings within the municipal area. In accordance with Section 88 of the Act, the rateable value of any land or buildings assessable to taxes shall be: in the case of land, the gross annual rent at which it is let; in the case of any building, the gross annual rent at which such building is let; otherwise on the basis of the cost of erection of the building and the cost of land.

The petitioner-University has been established under the H.P. University Act, 1970. In order to establish and run the University, various buildings have been constructed by the petitioner. With regard to the exemption from payment of Municipal taxes, the petitioner filed an application before the Assistant Commissioner Municipal Corporation, Shimla, which was decided by the respondent-Corporation summarily without assigning any reason or substantiating the same without any material on record. The same is clear from order dated 1st February,2000 whereby the objection were decided.

Aggrieved by the same, the appeal filed by the petitioner being Misc. Appeal No. 58/2000 titled as H.P. University Shimla Vs. Municipal Corporation, Shimla and another before the Commissioner (Revenue) H.P. was also dismissed vide order dated 21st April, 2001 (Annexure:P-4). The same was further taken up by way of a revision under Section 403 of the Act and registered as

case titled as H.P. University Vs. M.C. Shimla and was also decided on 29th July, 2002. From the perusal of the order, it is clear that the Revisional authority has wrongly recorded that objections were not filed by the petitioner at all. In fact, the counsels do not dispute that the objections filed were infact summarily rejected without reason or material on record. There is also no dispute that the order dated 29th July, 2002 is un-reasoned.

The dispute pertains to levy of tax in respect of Rani Laxmi Bai Girls Hostel.

In my view, all the buildings and the properties of the University cannot be clubbed together for the purpose of levy of tax. The usage character and nature of each property has to be seen and considered separately for the purposes of determination of rateable value and only thereafter the property is to be subjected to levy of tax in accordance with the provisions of Sections 88(a), 88(b) or 88(c) of the Act. There are some properties which have been let out by the University to its employees/students and teachers and there are certain buildings which are used by the University for its own use for Imparting Education to the students. The respondent-Corporation can levy tax on the rateable value as determined under any of the provisions of Chapter-VIII and particularly Sections 88(b), (c) and (d) of the Act.

As has been noticed above, there are so many properties which need to be looked into individually. In my view therefore the matter needs to be remanded back to the respondent-Corporation for consideration afresh.

The learned counsel for the petitioner has sought to rely upon the decisions of the apex Court in *Government Servant Cooperative House Building Society Ltd. and others Vs. Union of*

India and others (1998) 6 Supreme Court Cases 381, *Ltd. Col. P.R. Chaudhary Vs. Municipal corporation of Delh*i (2000) 4 Supreme Court cases 577 and *India Automobiles (1960) Ltd. vs. Calcutta Municipal Corporation and another* (2002) 3 Supreme Court Cases 388 to contend that the respondent's action to levy tax under Section 88 (c) of the Act is illegal and contrary to the settled position of law. Since I am remanding the matter back to the authority for its careful consideration, I am sure that the respondent shall keep in mind the principles of law laid down by the Apex Court while determining rateable value and subject the property of the petitioner to levy of tax in accordance with the provisions of Chapter-VIII of the Act.

The amount of tax already deposited by the petitioner pursuant to the bills raised by the respondent shall, however, continue to lie with the respondent and shall be subject to further adjustment.

In this view of the matter, the impugned order dated 29th July, 2002 (Annexure:P-6) is set aside and the case is remanded back to the respondent-Corporation to re-determine the rateable value in accordance with the provisions of Sections 88 (a), 88(b) and 88(c) of the Act. The respondent shall pass a reasoned order after affording due opportunity to the petitioner. In view of the aforesaid discussions, the present writ petition is allowed and disposed of accordingly.

(Sanjay Karol),
Judge.

June 11, 2007(R)